

STATEMENT OF THE CASE

Defendant-Appellant Kawanno Hughes appeals his convictions of battery by bodily waste, a Class D felony; battery on a law enforcement officer, a Class A misdemeanor; and resisting law enforcement, a Class A misdemeanor.¹ We affirm.

ISSUES

Hughes raises two issues for our review, which we restate as:

- I. Whether the State presented sufficient evidence to establish that Hughes knew that he was dealing with law enforcement officers.
- II. Whether the trial court exhibited bias against Hughes by delaying publication of Hughes' photographs to the jury and in not making identical rulings on objections by the State and Hughes.

FACTS

On the evening of November 26, 2006, Hughes and a female acquaintance attended a concert at the Star Plaza Theater in Merrillville, Indiana. While Hughes' companion went to the restroom, Hughes got in line to purchase drinks and popcorn. Hughes first purchased the drinks and then stood in line to purchase popcorn. Unfortunately, when he reached the front of the line, he was told that they had run out of popcorn and that no more popcorn would be available until the next intermission. Hughes asked the cashier for free popcorn when he came back, but the cashier responded that distribution of free food violated Star Plaza's policy. Hughes became argumentative and verbally abusive to the cashier, speaking in a loud voice, and using profanity.

¹ Hughes does not appeal his conviction of disorderly conduct, a Class B misdemeanor.

Shannon Bennett, an off-duty sheriff's deputy, approached the concession stand. Hughes noticed Officer Bennett and approached her while continuing to yell obscenities at the popcorn vendor. Hughes kept repeating something incoherent about "bitches and popcorn" from which Officer Bennett surmised that he might have a complaint about something that happened at the concession stand. She asked Hughes to wait by the front door and walked over to the concession stand.

As Officer Bennett attempted to talk to the concession employees, Hughes approached and began cursing at the employees. Officer Bennett asked him to stop screaming and lower his voice, which he did for a few moments. However, he quickly resumed yelling and managed to attract a crowd of onlookers. After repeatedly asking Hughes to stop screaming, Officer Bennett took him off to one side to calm him down. At that point, another security guard and off-duty sheriff's deputy, Niecey Gore, arrived and took charge of Hughes.

After speaking with Hughes for a few minutes, Gore determined that Hughes should be ejected from the building. She told him he would have to leave and he asked, "who was gonna make him leave because I wasn't gonna make him leave." (Tr. 118). Deputy Gore called for backup, telling Hughes that some more officers would arrive momentarily.

Hughes tried to escape up a set of nearby stairs, but two other officers, who had responded to Deputy Gore's backup request, were able to intercept him on the landing of the stairwell. Officer Bennett returned and was informed that Hughes had been asked to leave. Officer Bennett then stepped between Hughes and the other officers and told him

that if he did not calm down, she would be forced to arrest him for disorderly conduct. At that time, she showed him her sheriff's identification. Hughes shoved Officer Bennett against the wall and ran from the officers. Three officers tackled Hughes and held him on the floor of the landing, while Hughes screamed, kicked, and attempted to dislodge the officers.

Hughes was escorted outside by Officer Bennett and Gerardo Baldazo, an off-duty Lake Station detective. Because Hughes was still screaming and resisting the officers' directions, they placed him over the hood of Officer Bennett's marked sheriff's car. Officer Bennett had originally planned on transporting him to the jail, but realized that it would be dangerous because her car did not have a protective shield.

As Hughes bent over the car, he asked Detective Baldazo, "Officer, can you loosen my handcuffs; they're too tight." (Tr. at 96). Shortly thereafter, another marked police car arrived and the newly arrived officer and Detective Baldazo began to walk Hughes to the car. Hughes began to struggle, then made a sound like he was going to vomit, and he spit into Detective Baldazo's face. Hughes then spit into Detective Baldazo's hair.

Hughes was eventually transported to jail and was subsequently charged with numerous offenses. After a trial, a jury found him guilty of battery by body waste on a law enforcement officer, battery of a law enforcement officer, resisting law enforcement, and disorderly conduct. He now appeals the first three convictions.

DISCUSSION AND DECISION

I. OFFENSES INVOLVING "LAW ENFORCEMENT OFFICERS"

In the present case, Hughes was convicted of battery by body waste because he spit upon Detective Baldazo. He was convicted of battery on a law enforcement officer because he pushed Officer Bennett. Furthermore, he was convicted of resisting law enforcement because he forcibly resisted Detective Baldazo and Officer Bennett.

In order to obtain a conviction of battery by body waste, the State must establish that the defendant “knowingly or intentionally in a rude, insolent, or angry manner place[d] blood or another body fluid or waste on a law enforcement officer. . . .” Ind. Code § 35-42-2-6(e). In order to support a conviction of battery on a law enforcement officer, the State must show that the defendant “knowingly or intentionally” touched a law enforcement officer in a rude, insolent, or angry manner. Ind. Code § 35-42-2-1. Finally, in order to support a conviction of resisting law enforcement, the State must show that the defendant “knowingly or intentionally” forcibly resisted a law enforcement officer while the officer is lawfully engaged in the execution of his or her duties. Ind. Code § 35-44-3-3. Hughes contends that the State failed to prove beyond a reasonable doubt that he knew that Detective Baldazo and Officer Bennett were off-duty law enforcement officers. In other words, Hughes contends that the State failed to present sufficient evidence to support his convictions.

When reviewing the sufficiency of evidence to support a conviction, an appellate court considers only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). Stated differently, the court looks only to the evidence favorable to the State and all reasonable inferences therefrom. *Bennett v. State*, 871 N.E.2d 316, 319 (Ind. Ct. App. 2007), *adopted by* 878 N.E.2d 836

(Ind. 2008). Courts of review must be careful not to impinge on the fact-finder's authority to assess witness credibility and to weigh the evidence. *Drane, id.* We will affirm the conviction unless “no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Id.* (quoting *Jenkins v. State*, 726 N.E.2d 268, 270 (Ind. 2000)).

Our review of the transcript discloses that the evidence most favorable to the resisting law enforcement and battery by body waste convictions is that Hughes referred to Baldazo as “officer” when he asked him to loosen his handcuffs as he was positioned over the hood of the patrol car. At that point, Hughes knew he was dealing with law enforcement officers, and yet he spat in Detective Baldazo’s face and resisted the officers’ efforts to place him in a squad car. With respect to the resisting arrest conviction, even assuming Hughes was not aware that Detective Baldazo was a law enforcement officer, he cannot make the same claim of the fully-uniformed officer who was assisting Detective Baldazo in placing Hughes in the back of his marked squad car.

Our review of the transcript also discloses that the evidence most favorable to the battery on a police officer conviction is that, prior to Hughes shoving Officer Bennett, she established her identity as a Lake County sheriff’s deputy by showing him her identification and telling him that he risked having Officer Bennett arrest him if he continued his behavior. In addition, Officer Gore also testified that before the battery Bennett identified herself as a Lake County Police Officer.

Hughes is inviting this court to reweigh the evidence and to decide credibility. We decline his invitation.

II. TRIAL COURT'S IMPARTIALITY

Hughes contends that the trial court showed bias by showing a lack of belief in Hughes' evidence and by treating his hearsay objections differently than ones made by the State. Specifically, Hughes points to the court's delay in allowing him to publish certain photographs to the jury and the court's explanation of why certain hearsay objections made by Hughes should be overruled while sustaining certain objections by the State that Hughes claims are similar to those he made.

As Hughes correctly notes, "A fair trial by an impartial judge and jury is an essential element in due process." Appellant's Brief at 13 (quoting *Kennedy v. State*, 258 Ind. 211, 280 N.E.2d 611, 615 (1972)). The law presumes that a judge is unbiased and impartial. *Smith v. State*, 770 N.E.2d 818, 823 (Ind. 2002). To rebut that presumption, an appellant must establish from the judge's conduct actual bias or prejudice that places the defendant in jeopardy. *Id.* Such bias and prejudice exists only where there is an undisputed claim or where the judge expressed an opinion of the controversy over which the judge was presiding. *Id.* An adverse ruling alone is insufficient to show bias or prejudice. *Taylor v. State*, 587 N.E.2d 1293, 1303 (Ind. 2002).

The trial court has a duty to remain impartial and refrain from unnecessary remarks. *Miller v. State*, 789 N.E.2d 32, 40 n.8. (Ind. Ct. App. 2003). However, the court also has the duty to conduct the trial in a manner calculated to promote the ascertainment of truth, fairness, and economy of time. *Id.*

On direct examination, Hughes' companion was shown a number of photographs depicting marks on Hughes' body and was asked if she had taken the photos. She

answered, “Some of them I didn’t take.” (Tr. at 192). Thereafter, Hughes attempted to admit the photographs for the purpose of showing that he was handled roughly by the arresting officers. The State objected due to lack of foundation, and the objection was sustained. The court guided Hughes’ attorney through the process of laying a proper foundation, whereupon the photographs were admitted into evidence without objection from the State.

Hughes then requested that he be allowed to publish the photographs to the jury. The trial judge called for a bench conference outside the hearing of the jury and suggested that one of the photographs be published only after Hughes was examined because that photograph appeared to show a scar that could not have so quickly formed from the officers’ handling of Hughes. The trial judge further suggested that Hughes’ scar be viewed outside the presence of the jury and/or that the other three photographs be published to the jury. Hughes’ trial counsel agreed to postpone the publishing of the photographs until the next day of trial.²

Hughes did not object to the delay in publication, and he has therefore waived any argument on judicial bias. *See Flowers v. State*, 738 N.E.2d 1051, 1061 (Ind. 2000) (holding that a claim of judicial bias may be waived).

Early in the trial, Hughes objected to Officer Bennett’s testimony as to how she first encountered Hughes on the evening in question. She testified that she received a radio call from a ticket taker at an entrance near the concession stand and that the ticket

² Indeed, counsel said, “Sure. No problem.” (Tr. at 200-02).

taker requested that Officer Bennett come to the scene. Hughes objected on the basis of hearsay and the court ruled as follows:

It's overruled. Ladies and gentlemen, the testimony she's now about to give is not for the truth of the matter asserted. She's only telling you what someone else said for the purposes of what she did next. What she's going to tell you does not necessarily mean that what the person said was true. She's just telling you that to tell you what she did next and obviously the person who made this call is not here to be cross-examined. So, you should take it for what it's worth and that she—what she reacted to.

(Tr. at 70-71).

The second instance involved Officer Bennett's testimony that Deputy Gore had broadcast over the radio that Hughes needed to be ejected from the theater and that Deputy Gore requested backup. Again, Hughes objected and the court overruled the objection, noting that Deputy Gore was expected to testify and that the State was offering the testimony to show why Officer Bennett returned to the scene to assist Deputy Gore.

Hughes points to a pair of examples of what he claims are judicial bias because the court sustained hearsay objections in favor of the State. In one instance, the court sustained the State's objection to Hughes' testimony that his companion had asked him to purchase some popcorn. In the other, the court sustained the State's objection to Hughes' testimony that his companion had asked him to purchase wine for her. Hughes asserts that the court's treatment of the objections amounts to judicial bias.

Our review of the transcript discloses that the State had already established that Hughes' companion had requested popcorn and a drink. Furthermore, Hughes' responses

to his counsel's questions were rambling.³ In contrast, the reason for Officer Bennett's actions had not been established, and her testimony pertaining to the radio calls was necessary to establish those reasons. Accordingly, it appears that the trial court's sustaining of the State's objections was based on consideration of ascertainment of truth and economy of time, while its overruling of Hughes' objections was done for the reasons explained by the court to the jury. There is neither bias nor prejudice here.

CONCLUSION

The State presented sufficient evidence to establish that Hughes knew he was dealing with law enforcement officers. Furthermore, Hughes has failed to establish that the trial court exhibited bias that put him in jeopardy.

Affirmed.

DARDEN, J., and CRONE, J., concur.

³ We note that Hughes did not question the trial court's rulings.